



LAW-RELATED EDUCATION

The Newsletter of the ISBA's Committee on Law-Related Education

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Our LRE Newsletters are going to be emphasizing Abraham Lincoln in the coming editions to help teachers prepare for and enjoy celebrations of the 200th anniversary of his birth. All editions are archived at <http://www.isba.org/Sections/lrenewshome.html>

Happy Birthday Mr. Lincoln!!

As we continue our series of newsletter articles on Mr. Lincoln, it's interesting to note what other prominent figures thought of our 16th President:

England's Prime Minister, David Lloyd George, who accepted on behalf of the English people a statue of Lincoln that now sits in London near Parliament Square, said, "I doubt whether any statesman who ever lived sank so deeply into the hearts of the people of many lands as Abraham Lincoln did...In his life he was a great American. He is an American no longer. He is one of those giant figures, of whom there are very few in history, who lose their nationality in death...they belong to mankind."

Ask your students to find other quotes about Lincoln!

Here's one. Newspaper editor Horace Greeley (1811-1872), said of Lincoln, "He was not a born king of men...but a child of the people, who made himself a great persuader, therefore a leader, by dint of firm resolve, patient effort and dogged perseverance. He slowly won his way to eminence and fame by doing the work that lay next to him--doing it with all his growing might--doing it as well as he could, and learning by his failure, when failure was encountered, how to do it better. There was probably no year of his life when he was not a wiser, cooler and better man than he had been the year preceding."

And Franklin D. Roosevelt said, “Abraham Lincoln was not a son of the North or of the South. Born in Kentucky and nurtured in the very heart of our land, the scope of his intellect and of his sympathies was co-extensive with the length and breadth of our domain. Nor could Abraham Lincoln have come from any class that did not know, through daily struggle, the grim realities of life. Self-sustained, self-educated, and grounded in common sense through contact with his fellow man, he developed that homely philosophy with which we have come to associate his name and with which he was to solve the problems of a distraught Nation. From such an origin and from such a school, there emerged a character destined to transfuse with new meaning the concepts of our constitutional fathers and to assure a Government.”

Suggested reading: “Building the Myth: Selected Speeches Memorializing Abraham Lincoln,” Edited by Waldo W. Braden.



Things you can do to celebrate Abraham Lincoln’s 200th Birthday!

- A “Happy 200th Birthday” card is difficult to find. But that’s just what the Illinois Abraham Lincoln Bicentennial Commission is looking for. The group is asking people to **send cards to Lincoln** for his 200th birthday, on Feb. 12. The 16th president even has an official address with the U. S. Postal Service: Abraham Lincoln, Old State Capitol, 1 Old State Capitol Plaza, Springfield, IL. The commission said the cards it receives may be used for displays or publicity.
- **Read a book about Lincoln.** Reading lists are available at http://www.lincolnbicentennial.gov/learning-about-lincoln/for-teachers/default.aspx?ekmensenl=c580fa7b_14_96_btnlink
- **Donate a book on Lincoln**, or a Lincoln related theme, to an Illinois school or Library. Contact your local library or school to see if they have a wish list!
- Create your own **Lincoln Time Capsule**. Gather news clippings from the 2009 200th birthday celebration, add a penny, a \$5 bill and any other Lincoln-related items you deem appropriate and put the “capsule” in a safe place for future generations to enjoy. You may wish to laminate newspaper clippings to preserve them.

- Lincoln loved photography, which was new when he was President. **Sit for a family portrait** and include Lincoln in the photo in some way (include a bust or photo of Lincoln in the background). Lincoln was so interested in the new photography that he invited a photographer to use the Lincoln Home's basement as a dark room so he could watch the photographer develop the pictures just taken outside his home.
- Lincoln loved to **read Shakespeare**. Read a work by Shakespeare, go see a play, or a movie.
- President Lincoln established **Thanksgiving** as a National Holiday and declared that a day be set aside on the fourth Thursday of every November. In November, donate to a food pantry, or work at one, in memory and honor of Lincoln.
- Use the ISBA's **Lincoln coloring book** for a grade school coloring contest! <http://www.isba.org/lre/coloringbook.pdf>
- **Host a film series** on Lincoln in your community using films about Lincoln, or that have Lincoln in them.
Abraham Lincoln – DW Griffith, 1930
Young Mr. Lincoln – John Ford, 1940
Abe Lincoln in Illinois, 1940
Bill & Ted's Excellent Adventure – 1989
Bedazzled – 2000 (Upon wishing to be U.S. President, the main character is transformed into Abraham Lincoln in *Ford's Theatre*.)
National Treasure: Book of Secrets – 2007
- **Plant a living tribute** Lincoln: there are oak tree seedlings descended from one at his birthplace near Hodgenville, Kentucky.
http://www.historictrees.org/produ_ht/abrahmlinlovercp.htm
Or http://www.historictrees.org/produ_ht/abrahlinpersi_cvw.htm
Or Gettysburg trees:
http://www.historictrees.org/produ_ht/gettyhon_cvw.htm
Or Lincoln Tomb trees:
http://www.historictrees.org/produ_ht/lincolntmbwhtok_cvw.htm
- **Read a description of the 1909 Centennial** of Lincoln's birth. In 1909 Lincoln's son, Robert, was still alive and able to participate in the festivities and memorials. <http://hayleycourt.com/centpage.htm>
- **Take the time to visit some of the Lincoln sites. There are plenty! Visit some of the following by clicking here** <http://www.visit-springfieldillinois.com/Lincoln/sites.asp>

- Lincoln's Home – the only home he ever owned is in Springfield and is part of the National Park Service. <http://www.nps.gov/liho/>
 - The Depot – Lincoln made his last speech to his friends in Springfield as he departed for Washington, D.C. from this location. <http://www.nps.gov/features/liho/depot/depot01.htm>
 - Lincoln's Law Office http://www.illinoishistory.gov/hs/Lincoln_herndon.htm
 - Old State Capitol http://www.state.il.us/HPA/hs/old_capitol.htm
 - Lincoln's Tomb http://www.illinoishistory.gov/hs/lincoln_tomb.htm
 - New Salem Village – State Historic Site <http://www.lincolnsnewsalem.com/>
 - Presidential Library and Museum <http://www.alplm.org/home.html>
 - Museum of Funeral Customs <http://www.funeralmuseum.org/index-2.html>
 - Lincoln Memorial Gardens <http://www.lmgnc.org/>
- **Watch a film that depict aspects of Lincoln's Civil War (all should be available on DVD via Amazon.com or your public library):**
 - Aftershock – Beyond the Civil War (History Channel – 2006)
 - Andersonville (1996)
 - Cold Mountain (2003)
 - Friendly Persuasion (1956)
 - Gettysburg (1993)
 - Glory (1989)
 - Gods & Generals (2003)
 - Gone With the Wind (1941)
 - Ken Burns' The Civil War (1990)
 - Oldest Living Confederate Widow Tells All (1994)
 - Pharaoh's Army (1995)
 - Red Badge of Courage (1951)
 - Shenandoah (1965)
 - Sommersby (1993)
 - The History Channel Presents the Civil War (1999)
 - The Horse Soldiers (1959)
 - Wicked Spring (2007)
 - **Walk part of the Lincoln Heritage Trail**, 2200 miles of marked highways that parallel Abraham Lincoln's early years as he lived them in Kentucky, Indiana and Illinois. Starting in Kentucky, moving through Southern Indiana and into Illinois, some of the locations you'll pass on these roads can still be seen as Lincoln and his family saw them. There are woods and prairies, caves, rivers, lakes and rolling hills to enjoy. You can visit Lincoln's boyhood home in Southern Indiana at Pigeon Creek, where his mother, Nancy Hanks Lincoln is buried, and you'll also find

New Salem where he began his studies to become a lawyer. Now there are state parks and memorials dotting the landscape, each with their own links to Lincoln. Read more at

<http://www.alincolnlearning.us/lincolnhighway.html>

- The Looking for Lincoln Heritage Coalition, with offices in Springfield, has developed a wonderful resource for those interested in seeing places Lincoln knew. The site has itineraries for short trips around the state, special events postings, maps with driving directions and a “Looking for Lincoln History Hunt” that challenges families with younger children to participate in a sort of **history scavenger hunt** at the historic sites. You can contact the Lincoln Heritage Coalition at #1 Old State Capitol Plaza, Springfield, IL 62701 (217.782.6817).
http://www.lookingforlincoln.com/tour_detail.asp?id=8
- **Visit Mr. Lincoln’s Whitehouse** (on line). Read about the people who met Mr. Lincoln, see what the White House looked like, at <http://www.mrlincolnwhitehouse.org/index.asp>
- **Design a postage stamp.** As a former postmaster, it’s fitting that Mr. Lincoln was honored as early as 1869 with a stamp carrying his picture. The 90 cent stamp, one of the first two-color stamps ever produced in this country, would probably have been appreciated by Lincoln, who loved innovation and progress. At the time it was released, the Lincoln two color stamp was a technical advance in stamp production techniques. If one of these rare 1869 stamps came to auction market today, it would probably command an impressive price. To see a photo of the Lincoln stamp, visit www.virtualstampclub.com/icehouse.html (By the way, Lincoln is one of only two United States Presidents who served as postmasters prior to election. The other was Harry Truman.)
Educational Opportunity – ask students to design a stamp commemorating President Abraham Lincoln. Ask students to go to the U.S. Postal Service to see the new Lincoln postage stamps.
http://www.usps.com/communications/newsroom/2009/pr09_017.htm
- Are you interested in what Abraham Lincoln read? If so, visit www.historycooperative.org/journals/jala/28.2/bray.html Robert Bray has accumulated an annotated list of works that Lincoln read. The listed works are “graded” with A+ indicating that Lincoln attested in his writings that he had read the work. A indicates that Lincoln either referred to the work himself as one he’d read, at least in part, or a credible second party indicated that Lincoln had indicated reading the work. The list includes fiction and non-fiction works, ranging from poetry to textbooks. The list also includes works Lincoln read while studying to become a lawyer and some that reflect his longing to expand his knowledge on important national issues.

- **Draw a Lincoln Family Tree** depicting his parents, his wife and children, and his grandchildren. Just for the fun of it, check your telephone directory. Are there any Lincoln's living in your community? They won't be descendants of Abraham and Mary Lincoln as the last direct descendant died in the 1980's. Are there businesses named after Lincoln? How many?
- **Visit** the Abraham Lincoln Bicentennial Celebration Website!
<http://www.lincolnbicentennial.gov/>
- Read the text of the **Lincoln/Douglas Debates**
<http://lincoln.lib.niu.edu/lincolndouglas/nhdebate.html>
- Lincoln loved politics and working for the good of the people. Get involved in **local politics** in some way. Help a favorite candidate get elected. Write a letter expressing your opinion.
- **Host** a gathering to watch the national televised celebration on February 12, 2009.
- **Host a series of debates** in your community on current affairs or Lincoln-related themes.
- **Read** at least one of Lincoln's speeches
<http://showcase.netins.net/web/creative/lincoln/speeches/speech.htm>
- **Eat** something Lincoln would have enjoyed eating! Experience what it may have been like to have a family meal prepared simply, and eaten by the light of a fire, or by candle light.
http://www.ehow.com/how_2319196_eat-like-abraham-lincoln.html
- Take a **ride on horseback**. See what it would have felt like to get around the way Lincoln did.
- Lincoln loved animals and had a special soft-spot for kittens. Consider making **donation** to a local animal shelter in memory of Abraham Lincoln.
- Remember that one of Lincoln's nicknames was **Honest Abe**. Try to emulate him by being as honest and ethical as possible.
- **Take a walk**. If Lincoln wasn't on horseback or riding somewhere, he was walking. Take a walk around your neighborhood.

- Take a **ride on a train**. Lincoln often rode the rails often between Springfield and Chicago.
- Encourage savings by asking your classroom or children to **collect Lincoln pennies**. Donate whatever you save to a cause that would make Mr. Lincoln proud.
- **Read** some famous Lincoln quotes. This website has more than a few: <http://home.att.net/~rjnorton/Lincoln78.html>
- **Bake some cookies** shapes like Lincoln, or Lincoln's famous hat! Shape one like a log cabin, or Lincoln's Springfield home. Shape one like a horse, a dog or a cat, all animals Lincoln loved. Shape one like the Capitol dome, or one like Lincoln's tomb. Shape one like the Lincoln Monument in Washington, DC.
- Lincoln's second inaugural speech included the words "With malice toward none and charity for all." **Spend a day without malice**. Donate to your favorite charity.
- Lincoln would have communicated with his friends and family by letter or by telegram. Could you go an entire day without a phone or e-mail? **Write someone a letter**. No fair texting or e-mailing!
- **Read the Lincoln Log!** The Illinois Press Association has been working with the Illinois Abraham Lincoln Bicentennial Commission and The Papers of Abraham Lincoln to produce a free daily or weekly feature that tracks Lincoln through history. "The Lincoln Log" is a day-in-the-life newspaper column that shares with readers the things that Lincoln said or did on each day in history. The Lincoln Log series, which began Jan. 1, 2008, will run for two years and is meant to help generate interest in the bicentennial. If you and your students want to see what kinds of things Mr. Lincoln was doing or experiencing on a daily basis, this resource can help. Visit the Illinois Press Association website for more information on this project. <http://www.lincoln200.net/lincolnlog.asp>
- Read Walt Whitman's poem, "**Oh Captain, My Captain**," which was written after Lincoln was assassinated. Write your own Lincoln poem or read poems written by Mr. Lincoln, available at <http://showcase.netins.net/web/creative/lincoln/speeches/poetry.htm>
- Find some Lincoln Logs and **build a model log cabin**. If you can't find Lincoln Logs, try using pretzels! If you use pretzels, use frosting to hold them together while you build...and then enjoy.

- Lincoln was the subject of many political cartoons. Draw your own **political cartoon**, using Lincoln or another current politician as your subject.
- Create your own “**Word Search**” puzzle using Lincoln words. There’s a free online resource that lets you print your puzzle.
<http://puzzlemaker.discoveryeducation.com/WordSearchSetupForm.asp>
- Make an Abraham Lincoln **jigsaw puzzle**. Find a large enough picture of Lincoln, his home, a log cabin, or something else Lincoln related. Paste the picture onto cardboard and cut into unusual sized pieces. Scramble and put it together again and again!
- Place a “**memorial**” **ad** in your local newspaper, commemorating and honoring Abraham Lincoln.
- Celebrate **Law Day, May 1**, with Abraham Lincoln. The American Bar Association has numerous activities and resources available. This year’s theme is “A Legacy of Liberty.” Visit
<http://www.abanet.org/publiced/lawday/2009/home.shtml>
- Take an on line **trivia quiz** about Lincoln and/or his times at
http://www.funtrivia.com/quizzes/world/us_presidents/abraham_lincoln.html
- Lincoln loved to tell stories. Have a party and spend the time **telling stories!**
- Visit the only home Lincoln owned, in Springfield, Illinois. If you can’t make it to Springfield, take a virtual tour on-line courtesy of the National Park Service. <http://www.nps.gov/features/liho/home/home.htm>
- Read a book about Lincoln to a child. Visit a classroom and read. Suggested book: **Abe Lincoln’s Hat** by Martha Brenner.
- **Visit a courthouse** where Lincoln practiced while riding the circuit. A list of courthouses is posted at
<http://www.lookingforlincoln.com/historyhunt.asp>
- Take the family on a **hike** through a forest preserve or prairie. See the kinds of Illinois plants Lincoln would have known.
- Visit the **Illinois legislature** and watch how a bill becomes law. Check to see if the legislature is in session before planning your trip!

- Lincoln grew up on a farm. **Visit a working farm** and do some of the things that Lincoln would have done, like milk a cow! If you can't visit a farm, plant a garden and grow a crop that Lincoln might recognize, like corn.
- Lincoln was a lawyer. **Invite a lawyer** to your classroom to talk about the challenges of being a lawyer.
- **Write** yourself into a short story about Lincoln. Choose a time of his life (childhood, young adult, young politician, lawyer, statesman, candidate, president) and imagine meeting Lincoln. What experiences would you have shared? What conversations might you have had?
- During his limited formal education, Lincoln loved **spelling bees**, mostly because the teacher let the winner take a book home. Have a spelling bee! Give the winner a book.
- See what living in a log cabin would have been like by visiting Lincoln's New Salem State Park.
Check the website to see what hours the park is open.
<http://www.lincolnsnewsalem.com/>
- **Write a letter** to the current President. Grace Bedell wrote to President Elect Lincoln; she suggested that Lincoln grow a beard and he did. Offer congratulations, greetings, or a constructive suggestion to the Obama administration by writing a hand written letter to the White House, 1600 Pennsylvania Avenue NW, Washington, D.C. 20500.

The Aftermath - Did you know?

Acting as he believed Lincoln would have, on Christmas Day of 1868, President Andrew Johnson declared a general amnesty unconditionally pardoning those who had fought for the Confederacy during the Civil War. Were this act done by Lincoln, he would have been seen as magnanimous. Johnson didn't fare so well.

Later, President Johnson also pardoned Samuel Mudd, Edmund Spangler, and Samuel Arnold, all convicted conspirators in the assassination of Abraham Lincoln. Each served time for their crime, but all three received pardons from Johnson in 1869.

Look at some of the places and things named after Lincoln!

- U.S.S. Abraham Lincoln aircraft carrier
<http://www.navysite.de/cvn/cvn72.html>
- U.S.S. Abraham Lincoln submarine
<http://www.ussabrahamlincoln.org/>
- The Lincoln Tunnel in New York City

- The Lincoln Highway, the first transcontinental highway specifically designed with the automobile in mind!
http://en.wikipedia.org/wiki/Lincoln_Highway
- Countless Schools, Streets, Airports, Cities, Counties
(Lincoln, Illinois is the only city named for Lincoln before he became President)
http://cityoflincoln-il.gov/index.php?option=com_content&view=article&id=45:history&catid=44:education&Itemid=69
- Abraham Lincoln National Cemetery
<http://www.cem.va.gov/CEMs/nchp/abrahamlincoln.asp>
- Abraham Lincoln Presidential Museum and Library, Springfield
- Abraham Lincoln National Forest
<http://www.fs.fed.us/r3/lincoln/>
- What in your community is named for Lincoln?

Illinois State Bar Association - Lawyers in Classrooms – Educational Opportunity

The Illinois State Bar Association has purchased 100 copies of *Abraham Lincoln's Hat*, a book appropriate for grades K-3. Copies of the book were made available to the Lawyers in Classrooms volunteers to take to a classroom to help commemorate and celebrate the 200th anniversary of Lincoln's birthday. Volunteers were encouraged to donate it to the class or school library.

To see if there's an ISBA member who is a Lawyer in Classrooms volunteer, visit <http://www.isba.org/lawyersinclassrooms/>

After the Civil War – Lincoln's Plans

President Lincoln's second inaugural address provides tremendous insight into what his hopes were for the United States after the Civil War.

On March 4, 1865 President Lincoln delivered his second inaugural address:

Fellow-Countrymen:

At this second appearing to take the oath of the Presidential office there is less occasion for an extended address than there was at the first. Then a statement somewhat in detail of a course to be pursued seemed fitting and proper. Now, at the expiration of four years, during which public declarations have been constantly called forth on every point and phase of the great contest which still absorbs the attention and engrosses the energies of the nation, little that is new could be presented. The progress of our arms, upon which all else chiefly depends, is as well known to the public as to myself, and it is, I trust, reasonably satisfactory and

encouraging to all. With high hope for the future, no prediction in regard to it is ventured.

On the occasion corresponding to this four years ago all thoughts were anxiously directed to an impending civil war. All dreaded it, all sought to avert it. While the inaugural address was being delivered from this place, devoted altogether to *saving* the Union without war, urgent agents were in the city seeking to *destroy* it without war—seeking to dissolve the Union and divide effects by negotiation. Both parties deprecated war, but one of them would *make* war rather than let the nation survive, and the other would *accept* war rather than let it perish, and the war came.

One-eighth of the whole population were colored slaves, not distributed generally over the Union, but localized in the southern part of it. These slaves constituted a peculiar and powerful interest. All knew that this interest was somehow the cause of the war. To strengthen, perpetuate, and extend this interest was the object for which the insurgents would rend the Union even by war, while the Government claimed no right to do more than to restrict the territorial enlargement of it. Neither party expected for the war the magnitude or the duration which it has already attained. Neither anticipated that the *cause* of the conflict might cease with or even before the conflict itself should cease. Each looked for an easier triumph, and a result less fundamental and astounding. Both read the same Bible and pray to the same God, and each invokes His aid against the other. It may seem strange that any men should dare to ask a just God's assistance in wringing their bread from the sweat of other men's faces, but let us judge not, that we be not judged. The prayers of both could not be answered. That of neither has been answered fully. The Almighty has His own purposes. "Woe unto the world because of offenses; for it must needs be that offenses come, but woe to that man by whom the offense cometh." If we shall suppose that American slavery is one of those offenses which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and that He gives to both North and South this terrible war as the woe due to those by whom the offense came, shall we discern therein any departure from those divine attributes which the believers in a living God always ascribe to Him? Fondly do we hope, fervently do we pray, that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondsman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said "the judgments of the Lord are true and righteous altogether."

With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.

There are many educational activities that can be undertaken using this speech. Perhaps one of the best ways to help students understand Lincoln's thinking would be to have them paraphrase Lincoln's words and synopsize what they felt

he intended. Paying particular attention to the final paragraph, ask students what he meant when he said:

- “With malice toward none, with charity for all...” Did he mean just the North? Just the South? Or all citizens of the United States? What is malice? What does mean when he uses the term charity?
- “Let us strive to finish the work we are in, to bind up the nation’s wounds...” Did he mean just the North? Just the South? Or all citizens of the United States?
- “to care for him who shall have borne the battle and for his widow and his orphan...” Did he mean just the North? Just the South? Or all citizens of the United States?

Lincoln Legend and Lore

Mr. Lincoln's only two blood relatives in attendance the day he was buried in Springfield, Illinois were his son, Robert, and his cousin, John Hanks. Mrs. Lincoln was still in mourning in the White House. Tad was there with her. His father, Thomas, and mother, Nancy Hanks Lincoln, were both dead, as were two of his sons, Eddie and Willie.

President Theodore Roosevelt wore a ring containing a lock of Abraham Lincoln's hair when he was inaugurated in 1905. The hair had been cut by Dr. Charles C. Taft, one of the attending physicians the night of the assassination. The hair was purchased by John Hay on February 9, 1905, and was given to Roosevelt less than a month later. In his *Autobiography*, Roosevelt wrote, "When I was inaugurated on March 4, 1905, I wore a ring he (John Hay) sent me the night before, containing the hair of Abraham Lincoln. This ring was on my finger when the Chief Justice administered to me the oath of allegiance to the United States."

President Barack Obama used the same Bible that Abraham Lincoln used for his swearing in, becoming the second President to use that particular book. President Obama continues to reference Lincoln in many of his speeches and actions. Lincoln surrounded himself with a “Team of Rivals” in his cabinet, and Obama is following the same pattern by appointing both Democrats and Republicans to his cabinet.

Teacher On-Line Resources

Secretary of State Jesse White’s Winter 2009 Newsletter includes a list of Internet resources, some of which are copied below:

www.sitesforteachers.com Provides a comprehensive list of teacher resources ranked by popularity.

www.webjunction.org/

Developed by the Illinois State Library and the Illinois regional library systems, this site offers information on statewide projects and grants, primarily for librarians and library professionals.

For those who are teaching English as a second language, there are two sites listed: www.eslsite.com and www.clese.org/brightideas_eslcurric.htm

FUN AND GAMES

To help students learn about Internet searches, set them a challenge. How many famous or infamous people were born on February 12th? Including Abraham Lincoln, who else would be celebrating their birthday on the 12th. We found that Charles Darwin was born on the same date, same year as Lincoln... Teachers, there's a pretty comprehensive list to be found at http://www.brainyhistory.com/daysbirth/birth_february_12.html

For younger students, the ISBA has an Abraham Lincoln coloring book available on-line. If you would like class size sets sent to you, you may request copies by e-mailing Donna Schechter at dschechter@isba.org. Be sure to include the number of copies of the coloring book you would want, and a street address so we can ship in a timely manner. To view the coloring book, or to print your own copies to avoid delay, visit <http://www.isba.org/teachers/lincoln/lincolncoloringbook.pdf>

President Abraham Lincoln and Military Tribunals: Did You Know?

Article compiled by Pablo A. Eves with assistance from other members of the McLean County Bar Association.

The outgoing President George W. Bush came under fire for convening military tribunals without congressional approval to deal with enemies of the State after September 11, 2001.¹ In doing so, the Bush Administration relied on precedent developed in part by President Abraham Lincoln – widely considered the greatest president of the United States of America – during the Civil War.² Starting in April, 1861, President Lincoln exercised extraordinary presidential powers including convening military tribunals of American citizens without congressional approval – and likewise came under fire by his critics.³ During the Civil War, President Lincoln declared all rebels arrested within the U.S.

¹ See e.g. <http://www.slate.com/id/2059375/>; <http://writ.news.findlaw.com/dean/20011123.html>

² <http://www.heritage.org/research/nationalsecurity/hl834.cfm>

³ Id.

subject to martial law.⁴ In fact, approximately 4,000 trials by military commission were conducted by the Union Army under President Lincoln during the Civil War.⁵ Contrast that with the approximate number of current and former detainees held in Guantanamo Bay, Cuba by the United States military awaiting disposition: about 760.⁶

What is a military tribunal and why are there such criticisms of its use? A military tribunal or commission is a kind of court designed to try members of enemy forces during wartime.⁷ It generally operates outside the scope of conventional criminal and civil proceedings and is distinguishable from them as follows: First, charges are brought by a military authority. Second, those same charges are prosecuted by the same military authority. Third, the defendant is judged and sentenced by officers of the same military authority. Fourth, whereas convictions in civilian courts must be unanimous, military tribunals are able to convict by a two-thirds majority. Fifth, different rules of evidence apply, with lower standards for admission. Sixth, defendants are not guaranteed the right to appeal their convictions. Seventh, whereas civilian trials must be open to the public, military tribunals can be held in secret.⁸

It is because of the arguable constitutional weaknesses of military tribunals that the Bush Administration came under fire from its critics.⁹ Given these facts, how did President Lincoln justify the extraordinary action of convening military tribunals during the Civil War? First of all, it is well known that only Congress is constitutionally empowered to declare war; however, ‘suppression of rebellion’ is recognized as a function of the executive.¹⁰ President Lincoln referred to the suppression of rebellion in supporting the use of military tribunals.¹¹ Specifically, he found support for the exercise of extraordinary presidential powers to do so in the U.S. Constitution. He cited Article II, Section 1 of the Constitution whereby the chief executive is required “to

⁴ <http://www.fas.org/irp/crs/RL32458.pdf>

⁵ <http://www.heritage.org/research/nationalsecurity/hl834.cfm>

⁶ See e.g. http://en.wikipedia.org/wiki/Guantanamo_Bay_detention_camp;
<http://www.npr.org/templates/story/story.php?storyId=4715916>;
<http://www.cnn.com/2009/POLITICS/01/26/gitmo.next/>

⁷ See e.g. <http://www.heritage.org/research/nationalsecurity/hl834.cfm>;
<http://news.bbc.co.uk/1/hi/world/americas/1701789.stm>

⁸ See e.g. Id.; http://en.wikipedia.org/wiki/Military_tribunal

⁹ <http://www.nybooks.com/articles/15122>

¹⁰ See e.g. <http://www.heritage.org/research/nationalsecurity/hl834.cfm>;
<http://www.press.uchicago.edu/Misc/Chicago/237931in.html>

¹¹ Id.

preserve, protect and defend” the Constitution and in Section 3, that the chief executive is required to “take care that the laws be faithfully executed.”¹² All of the laws which were required to be “faithfully executed”, Lincoln reasoned, were being resisted and “failed of execution” in the seceding states.¹³ In fact, by April, 1861, eleven Southern slave states had seceded from the Union, or approximately one-third of the Union.¹⁴ Finally, President Lincoln relied on previous instances of the exercise of such presidential prerogative; he was not the first president to convene military tribunals. That precedent was first set by General George Washington who relied on military tribunals to try enemies of the State during the Revolutionary War.¹⁵

The U.S. Supreme Court disagreed with President Lincoln’s expansive view of presidential power to convene military tribunals during the Civil War.¹⁶ In *Ex Parte Milligan*, Southern sympathizer Lambdin P. Milligan, an Indiana lawyer and politician, had been tried by a Union military tribunal, found guilty, and sentenced to hang. Milligan had been involved in a failed conspiracy to seize federal armories in the Midwest to arm Southern sympathizers in rebellion against Union troops.¹⁷

Milligan filed a petition with the federal district court in Indiana claiming that he was being held illegally. Fortunately for Milligan, the war ended before his sentence could be carried out. The case made it to the U.S. Supreme Court and in 1866 the high court ruled that martial law should be confined to “areas of actual warfare”.¹⁸ Because the State of Indiana was so far removed from the battlefield and its civilian courts had never closed, the high court ruled that military tribunals have no jurisdiction over civilians.¹⁹

Now it’s your turn to research more about President Lincoln’s use of his presidential power to convene military tribunals during the Civil War.

¹² See e.g. Id.; <http://www.usconstitution.net/const.html>

¹³ <http://www.usconstitution.net/const.html>.

¹⁴ See e.g. <http://library.thinkquest.org/CR0215469/secession.htm>;
http://en.wikipedia.org/wiki/American_Civil_War;

¹⁵ <http://www.fas.org/irp/crs/RL32458.pdf>

¹⁶ 71 U.S. 2 (1866)

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

Does Lincoln's use of military tribunals to try enemies of the State during the Civil War change your opinion of President Lincoln? Why or why not?

Do you agree with the verdict of history that President Lincoln is one of the greatest U.S. presidents? Why or why not?

Now, research more about other presidents' use of their presidential power to convene military tribunals in wartime. Start with the outgoing George W. Bush or our first president, George Washington.

What differences or similarities in the use of executive power to convene military tribunals can you find between President Lincoln and President Bush? President Washington?

Does this information change your opinion of President Lincoln? If so, how? Find out what other presidents convened military tribunals. How do those presidents stack up against President Lincoln? Does this information change your opinion of President Lincoln? If so, how? If not, why not?

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